IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2737 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL SHAKUBEN MAGANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2737 of 1994

MR GI DESAI for Petitioner No. 1

Mr. KT Dave, AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 09/04/2004

ORAL JUDGEMENT

Being aggrieved and dissatisfied with the order passed by the Collector, Vadodara dated 10th February 1992 fixing rent for using Well on lease basis for the period between 1991 and 1995-96 at the rate of Rs. 1500 per annum confirmed by the learned Special Secretary

(Appeals), Revenue Department, Ahmedabad by his judgment and order dated 28/30th December 1993, the petitioner had preferred the present Special Civil Application under Article 227 of the Constitution of India.

2. This matter was adjourned time and again. Shri G.I. Desai, learned advocate appearing for the petitioner had chosen not to remain present at any time and therefore the matter was adjourned time and again in the interests of justice enable the learned counsel appearing on behalf of the petitioner to remain present. Today also, when the matter is called out, the learned advocate appearing for the petitioner had not remained present. Under the circumstances, the matter is decided ex-parte on merits on the basis of the materials available on record.

3. The petitioner had applied for getting the Government Well on lease basis situate in Block No. 876 at Village Mankadi, Taluka Sankheda, District-Vadodara, pursuant to the applications invited by the Mamlatdar, Sankheda and the petitioner was the only person who has applied for getting the Well on lease basis. Earlier also, the very petitioner made an application for getting the aforesaid Well on lease basis since 1966 and according to the petitioner when the Well in question was given to the petitioner on lease for the period between 1966 to 1975-76 valuation of the Well was fixed at Rs. 2500 and accordingly yearly rent was fixed at Rs. 150/-. Thereafter, for the period between 1976-77 to 1978-79, the valuation was fixed at Rs. 2500, however the yearly rent was increased from Rs. 150/- to Rs. 300/- for the period between 1979 to 1983-84 the valuation of the Well was increased from Rs. 2500 to Rs. 6000 and accordingly the yearly rent was fixed at Rs. 360/-. Thereafter, for the period between 1984 to 1988 the valuation of the yearly rent was continued to be the same. However, in the year 1988-89 the valuation was fixed at Rs. 10000 and yearly rent was fixed at Rs. 500. As the minimum rent was to be counted at Rs. 500 per year the same continued upto 1991. However, when the order came to be passed on 10th February 1992 for giving the aforesaid Well on lease to the petitioner though the valuation was fixed at Rs. 10,000 the rent came to be fixed to the extent of 15 per cent of the value and/or Rs. 1500 whichever is less.

4. Being aggrieved and dissatisfied with the aforesaid order dated 10th February 1992 passed by the Collector in directing the petitioner to pay the rent at the rate of Rs. 1500 per year the petitioner preferred

Revision Application before the learned Special Secretary (Appeals), State of Gujarat, Ahmedabad. It was contended on behalf of the petitioner that when in the earlier years maximum rent was fixed at Rs. 500 per year, straightway the same has been increased to Rs. 1500/per year that is at the rate of 15 per cent of the market value and therefore it was contended on behalf of the petitioner that the same should be quashed and set aside. That ultimately, the learned Special Secretary (Appeals),State of Gujarat, Ahmedabad, by his judgment and order dated 28th December 1993 dismissed the said revision application by holding that the rent which was fixed by the Collector was pursuant to the Government Resolution dated 28th June 1990 by which rent was to be charged at the rate of 15% of the market value and therefore there was no illegality committed by the Collector.

5. Being aggrieved and dissatisfied with the aforesaid judgment and order dated 28/30th December 1993, the petitioner had preferred the present Special Civil Application. It is pertinent to note that the said lease was for the period between 1991 to 1995-96 and by afflux of time the said period is over. As it is found that the rent which was fixed by the Collector was on the basis of the Government Resolution dated 28th June 1990 by which the Government has framed a policy and fixed the rent for giving the Well on lease,i.e., on 15% of the market value, it cannot be said that the Collector has committed any error or illegality in fixing the rent at the rate of 15 per cent of the market value. The Government Resolution dated 28th June 1990 has not been challenged by the petitioner. In absence of challenge to the aforesaid Government Resolution dated 28th June 1990 passed by the State Government on the basis of which the Collector has fixed the rent, it cannot be said that the Collector has committed any illegality.

6. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be rejected and is rejected accordingly. Rule is discharged. Ad-interim relief stands vacated with no order as to costs.

rmr. [M.R. Shah, J.]